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APPLICATION OF ONCOR	§	
ELECTRIC DELIVERY	§	
COMPANY, LLC AND AEP	§	BEFORE THE
TEXAS INC. TO AMEND	§	
THEIR CERTIFICATES OF	§	
CONVENIENCE AND	§	STATE OFFICE OF
NECESSITY FOR 345-KV	§	
TRANSMISSION LINES IN	§	
PECOS, REEVES, AND WARD	§	ADMINISTRATIVE HEARINGS
COUNTIES, TEXAS (SAND	§	
LAKE TO SOLSTICE CCN)	§	

**EXCEPTIONS TO THE PROPOSAL FOR DECISION OF  
COG OPERATING LLC (CONCHO)**

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April 23, 2019

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**INDEX OF ABBREVIATIONS AND ACRONYMS**

ALJ	Administrative law judge
CCN	Certificate of convenience and necessity
EA	Environmental Assessment
ERCOT	Electric Reliability Council of Texas
PFD	Proposal for decision
PUC	Public Utility Commission of Texas
PURA	Public Utility Regulatory Act
ROW	Right-of-way
SOAH	State Office of Administrative Hearings
TPWD	Texas Parks and Wildlife Department

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**EXCEPTIONS TO THE PROPOSAL FOR DECISION OF  
COG OPERATING LLC (CONCHO)**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES AND  
COMMISSION:

COMES NOW COG Operating LLC (Concho)<sup>1</sup> to file its Exceptions to the Proposal for Decision (PFD). The administrative law judges (ALJs) filed the PFD on April 10, 2019. In a memorandum dated April 11, 2019, the Public Utility Commission of Texas (Commission) set the deadline for filing Exceptions as April 23, 2019. These Exceptions are timely filed. To support its Exceptions, Concho respectfully shows:

**INTRODUCTION AND SUMMARY OF EXCEPTIONS**

The ALJs' PFD focuses on the Applicants'<sup>2</sup> estimated costs and insufficiently considers engineering constraints and moderating the impact of the project on the affected community and landowners. The Commission should modify the PFD in three ways: (1) approve Route 325 Modified, instead of Route

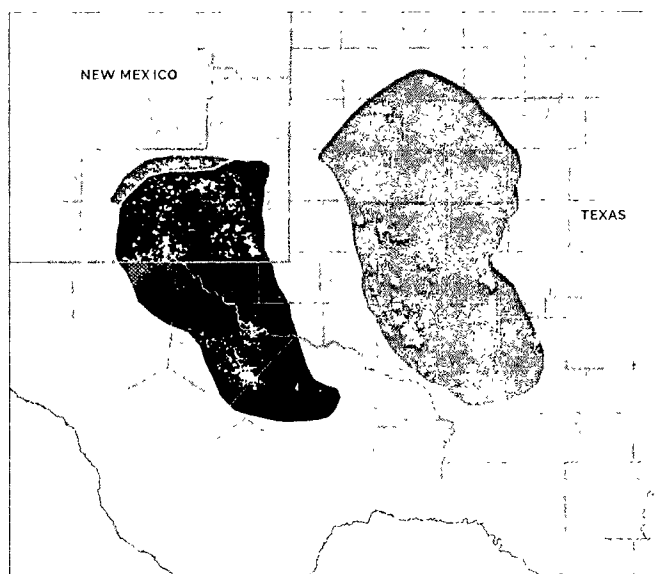
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<sup>1</sup> Concho Ex. 1 at 3. "COG Operating LLC operates as a wholly-owned subsidiary of Concho Resources Inc."

<sup>2</sup> The PFD refers to Oncor Electric Deliver Company, LLC and AEP Texas Inc. as "Applicants."

320, because it best meets the routing criteria in PURA and the Commission's rules; (2) approve modifications on several links to avoid interference with existing and ongoing oil and gas development; and (3) grant the Applicants post-approval flexibility to accommodate oil and gas development-related engineering constraints that exist now or may arise before construction of the project.

The proposed transmission line project is necessary to serve rapid load growth, primarily due to oil and natural gas production, processing, and transportation, and associated economic expansion. The bulk of the region is used for oil and gas production or range for livestock; cropland within the study area is less common and is limited to scattered irrigated fields.<sup>3</sup> The Commission must consider PURA criteria, engineering constraints, and costs.<sup>4</sup> The Commission also must consider whether the routes parallel or utilize existing compatible rights-of-way and property lines or other natural or cultural features and whether the routes conform with the policy of prudent avoidance.<sup>5</sup> After considering those factors, the rule states the line should be routed to the extent reasonable to moderate the impact on the affected community and landowners.<sup>6</sup>



**Figure 1** - The map above illustrates in orange Concho's acreage in the Texas portion of the Delaware Basin.

<sup>3</sup> Applicants Ex. 1, Application, Attachment 1, Environmental Assessment at 3-29.

<sup>4</sup> 16 Texas Administrative Code (TAC) 25.101.

<sup>5</sup> 16 TAC § 25.101(b)(3)(B)(i-iv).

<sup>6</sup> 16 TAC § 25.101(b)(3)(B).

Concho is an independent oil and natural gas company engaged in the acquisition, development, exploration and production of oil and natural gas properties. It operates oil and gas properties in the New Mexico Shelf, the Delaware Basin, and the Midland Basin. Concho's operations are primarily focused in the Permian Basin of southeast New Mexico and West Texas. The Delaware Basin is a legacy area for Concho historically developed through vertical wells. Today, Concho is developing its Texas Delaware Basin positions using horizontal drilling, multiwell project development, and advanced completion techniques.<sup>7</sup>

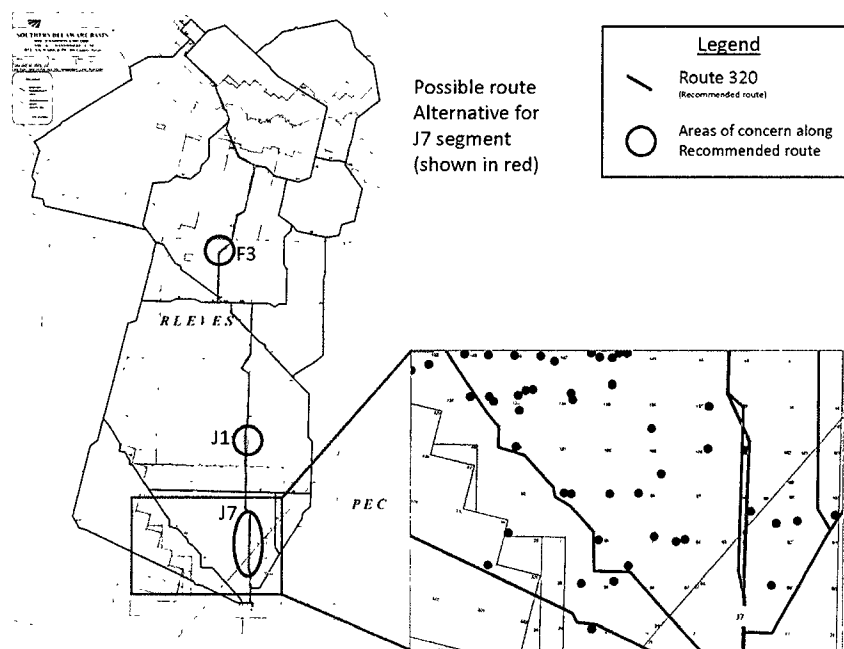


Figure 2 – See Concho Ex. 1, Attachment TB-1 for a larger version of this map

The project may affect several of Concho's existing oil and gas wells and ongoing development in its Big Chief oil field shown in yellow in Figure 2 above. Route 320 may affect production facilities near Links J1 and J7. The proposed transmission line links are solid red or green lines. Links J1 and J7 interfere with Concho's efficient development of its Big Chief field surrounding and west of

<sup>7</sup> Concho Ex. 1 at 3.

Links J1 and J7. The Commission should consider those existing wells and ongoing development an engineering constraint that must be accommodated for economic, health, and safety reasons.

The best way to avoid those engineering constraints-and moderate the impact on the community and landowners-is to approve Route 325 Modified, even though-using the utilities' standard cost estimates-it is more expensive than the ALJs' recommended Route 320. However, whether the Commission approves Route 325 or Route 320, it should approve Concho- and Oxy-requested modifications to minimize the effect of the project on oil and gas development. The Commission also should approve post-approval flexibility language that addresses existing and unknown engineering constraints about which the Applicants become aware after approval of the project.

## **STANDARD OF REVIEW**

The Commission may change a finding of fact or conclusion of law made by the ALJs or vacate or modify an order issued by the ALJs only if the Commission:

- (1) determines that the ALJs:
  - (A) did not properly apply or interpret applicable law, commission rules or policies, or prior administrative decisions; or
  - (B) issued a finding of fact that is not supported by a preponderance of the evidence; or
- (2) determines that a commission policy or a prior administrative decision on which the administrative law judge relied is incorrect or should be changed.<sup>8</sup>

## **EXCEPTIONS**

### **I. Introduction**

The evidence demonstrates Route 325 Modified best meets the routing criteria in PURA and the Commission's rules. Compared to Route 320 Modified,

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<sup>8</sup> 16 TAC 22.262(a).



Exceptions to the Proposal for Decision  
COG Operating LLC (Concho)

Route 325 Modified impacts less oil and gas development, affects one fewer habitable structure, has greater than nine miles more paralleling of existing transmission lines, 14 miles more length paralleling existing compatible rights-of-way, less length through commercial and industrial areas, 7.4 miles more length through rangeland pasture, and parallels less pipelines. Table 1 below summarizes several of the key factors supporting approval of Route 325 over Route 320.

	<b>Route 325</b>	<b>Route 320</b>
Cost	\$145,596,000	\$126,725,000
Habitable structures	<b>37</b>	38
Length of route parallel to existing electric transmission lines	<b>58,317</b>	10,149
Length of route parallel to existing public roads/highways	7,844	16,287
Length parallel to pipelines	<b>747</b>	1,244
Length parallel to apparent property boundaries	<b>78,749</b>	44,365
Total length of route parallel to existing compatible rights-of-way	<b>138,047</b>	63,940
Length through commercial/industrial areas	<b>9,936</b>	10,851
Length across rangeland pasture	<b>231,613</b>	192,570
Better avoids oil and gas development	<b>Yes</b>	No

**Table 1**  
Comparison of key factors supporting approval of Route 325 Modified

Concho does not criticize the ALJs for focusing on the Applicants' estimated costs for the project. It is common in transmission routing proceedings for the ALJs and the Commission to rely on utility-provided estimated costs for

the project. In preparing their standard cost estimates, however, the utilities did not have access to the data and information possessed by Concho and Oxy about their development of the resources underlying the need for this project. The PFD recognizes the area “is undergoing rapid development in energy infrastructure.”<sup>9</sup> Concho and Oxy provided extensive testimony about the extent of their development in the study area and described the economic, health, and safety reasons the Commission should avoid engineering constraints.

Only two<sup>10</sup> landowners intervened and none of the routes considered in the PFD will affect their properties. The intervenors who actively participated were Concho, Oxy, and Plains Pipeline. Concho and Oxy provided dozens of consent forms from affected landowners who support modifications to avoid identified engineering constraints. Those landowners are surface owners who also own corresponding mineral rights and approved filing the consents so the Commission will know their preference.

Concho and Oxy worked with the Applicants to ensure requested modifications were supportable and did not create new engineering constraints. “When one party identified a modification to avoid existing or ongoing development, that modification often resulted in a new conflict with another party’s development or other engineering constraints.”<sup>11</sup> “The map imagery available to the parties varied and soon-to-be developed sites were not known by the other parties.”<sup>12</sup>

This level of cooperation is unprecedented. The Applicants worked with Concho and Oxy because they recognized the need to avoid engineering constraints that can increase the constructed costs of the project and impact the safety of their workers. “If the Commission approves Route 325 Modified, the project will avoid active development in the study area and minimize the need for

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<sup>9</sup> PFD at 30.

<sup>10</sup> Forrister Generation-Skipping Trust owns property in Reeves County with a rental house, water wells, an oil well, and about 20 different pipeline easements. Forrister Ex. 1. Oxy and Plains Pipeline also own land affected by the transmission line. Their properties are used for commercial purposes associated with their businesses. Alan Zeman owns fallow farm land in Reeves County. There is oil and gas exploration on the property. Zeman Ex. 1.

<sup>11</sup> Concho Ex. 2 at 9.

<sup>12</sup> *Id.*

modifications to accommodate oil and gas development in the central area [Concho] expect[s] will pose new problems before Oncor and AEP begin construction of this project.”<sup>13</sup> The parties’ experience in developing the consent modifications supports the Applicants’ request for post-approval flexibility to address engineering constraints.

PURA, the Commission’s rules, and the Applicants’ table of data do not include the “better avoids oil and gas development” consideration. Concho’s and Oxy’s data and evidence are not commonly-presented in transmission routing cases, but each company provided detailed information about their operations and the potentially-detrimental effect of the project on those operations. Approving a route that, using the utilities’ standard cost estimates, is more expensive than another option is a policy decision the ALJs properly left to the Commission. Besides cost, the Commission must consider engineering constraints and moderation of impact on the community and landowners and those factors and likely-higher-than-expected construction costs<sup>14</sup> support the “better avoids oil and gas development” consideration.

Oncor witness Perkins testified Route 325 Modified “is another attractive route the Commission should strongly consider.”<sup>15</sup> The record shows Route 325 Modified will have a less negative effect on landowners and the producers responsible for the increased development creating the need for this project while paralleling, to a greater extent, existing transmission line rights-of-way and compatible rights-of-way. The Commission should (1) approve the western route (Route 325 Modified) that best avoids Concho’s<sup>16</sup> and Oxy’s oil fields; (2) approve modifications proposed by Concho and Oxy and coordinated with the Applicants; and (3) approve post-approval flexibility language to address existing and unknown engineering constraints about which the Applicants become aware after approval of the project.

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<sup>13</sup> *Id.*

<sup>14</sup> Concho and Oxy each provided evidence that impacts on their operations could cost millions of dollars in actual costs and reduced production.

<sup>15</sup> Applicants Ex. 13, Perkins Rebuttal at 4.

<sup>16</sup> While Route 325 “requires minor modifications to avoid existing Concho wells, the route goes west and avoids most of Concho’s Big Chief area. Route 325 Modified best avoids active oil and gas development in the study area.” Concho Ex. 2 at 8-9.

## **II. Procedural History**

Concho has no exceptions to jurisdiction, notice, or the procedural history.

## **III. Jurisdiction and Notice**

Jurisdiction and notice of the application are uncontested issues. Concho has no exceptions to jurisdiction, notice, or the procedural history.

## **IV. Issues Relating to the Application**

The Commission's Order of Referral and Preliminary Order included a list of issues about the Applicants' application, need, the best route, and TPWD's recommendations.<sup>17</sup> Testimony presented and the hearing on the merits focused on Concho's recommended route, Route 325 Modified, Route 320, and Route 41. Route 325 Modified is the route that best meets the requirements of PURA and the Commission's rules.

### **A. Issue No. 1: Application**

Concho has no exceptions, the Applicants satisfied Issue No. 1.

### **B. Issue No. 2: Need–Are the proposed facilities necessary?**

Concho has no exceptions, the Applicants satisfied Issue No. 2.

### **C. Issue No. 3: Is the project the better option?**

Concho has no exceptions, the Applicants satisfied Issue No. 3.

## **V. Route Selection**

### **A. Issue No. 4: Which route is the best alternative?**

The answer to Issue No. 4, which route best satisfies PURA<sup>18</sup> and the Commission's rules,<sup>19</sup> is Route 325 Modified. Compared to Route 320 Modified, Route 325 Modified impacts less oil and gas development, impacts one fewer

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<sup>17</sup> Order of Referral and Preliminary Order at 2-5.

<sup>18</sup> PURA § 37.056(c).

<sup>19</sup> 16 TAC § 25.101(b)(3)(B).

habitable structure, has greater than seven miles more paralleling existing transmission lines, more length paralleling existing rights-of-way and property lines, less length through commercial and industrial areas, 4.393 miles more length through rangeland pasture, and parallels 0.8 miles fewer pipelines. Table 1 above lists this data for both alternative routes.

The analysis in this section first looks to the statutory requirements for the Commission's review of an application to approve a transmission line. That analysis provides no controlling evidence on which route is the best route. The Commission's rule then requires, after considering the statutory criteria, engineering constraints, and costs, the line shall be routed to the extent reasonable to moderate the impact on the affected community and landowners. Engineering constraints should lead the Commission to moderate the impact on the affected community and landowners.

#### **1. PURA § 37.056(c) criteria**

PURA requires the Commission to consider the adequacy of existing service, the need for additional service, the effect of granting the certificate on the recipient of the certificate and any electric utility serving the area and other factors, such as: community values; recreational and park areas; historical and aesthetic values; environmental integrity; and the probable improvement of service or lowering of costs to consumers.<sup>20</sup> The Commission's decision often is difficult with several conflicting factors. The Third Court of Appeals recognized this difficulty when it stated:

To implement in particular circumstances such broadly stated legislative objectives and standards, the Commission must necessarily decide what they mean in those circumstances; and because some of them obviously compete *inter se*, the agency may in some cases be required to adjust or accommodate the competing policies and interests involved.... None of the statutory factors is intended to be absolute in the sense that any one shall prevail in all possible circumstances. In making these sometimes delicate

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<sup>20</sup> PURA § 37.056(c).

accommodations, the agency is required to exercise its “expertise” to further the overall public interest.<sup>21</sup>

The *Texland* court stated these “factors” are stated in the broadest possible terms. They are expressions of the Legislature’s policy and are legislative standards guiding the Commission in its administration of the certificate process.<sup>22</sup>

### **Adequacy of existing service and need for additional service**

The PFD states the project will deliver 345 kV transmission to an area not currently served at this voltage and also will address critical reliability issues resulting from rapid load growth in an area of oil and natural gas development and associated economic expansion. The project will support load growth, address reliability violations under ERCOT protocols and NERC reliability standards, and provide infrastructure to facilitate future transmission system expansion. Concho has no exceptions to this conclusion.

### **Community values**

Neither statute nor the Commission’s rules define the term “community values.” The PFD recognizes the Commission has viewed the term “community values” as “a shared appreciation of an area or other natural resource by members of a national, regional, or local community.”<sup>23</sup> Community values may include landowner concerns and opposition.<sup>24</sup> Commission decisions also define adverse effects upon community values as “those aspects of a proposed project that would significantly alter the use, enjoyment, or intrinsic value attached to an important area or resource by a community.”<sup>25</sup>

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<sup>21</sup> *Hammack v. Public Utility Comm’n of Texas*, 131 S.W.3d 713, 723 (emphasis in original) (Tex. App.-Austin 2004, no pet.), quoting *Public Util. Comm’n v. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex.App.-Austin 1985, writ ref’d n.r.e.).

<sup>22</sup> *Public Util. Comm’n v. Texland Elec. Co.*, 701 S.W.2d 261, 266 (Tex.App.-Austin 1985, writ ref’d n.r.e.).

<sup>23</sup> PFD at 22.

<sup>24</sup> *Id.*

<sup>25</sup> *Application of Brazos Electric Power Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a 138-kV Transmission Line in Denton County*, Docket No. 44060, Order at FoF 29 (June 13, 2016). See also, *Application of LCRA Transmission Services Corporation to Amend its*

The majority of the Sand Lake-to-Solstice project area consists of rural, undeveloped land used primarily for oil and gas production, livestock grazing, and irrigated crop production.<sup>26</sup> The PFD, however, discusses as community values requested route modifications instead of in its discussion of Issue No. 5, alternative routes or facilities configurations. When weighing all community values and the evidence on route modifications, the ALJs conclude community values considerations favor Route 320 over all other routes.<sup>27</sup> The PFD acknowledges the primary landowner concerns raised through testimony and examination at the hearing focused on the effects of the project on oil and gas production.<sup>28</sup> Those concerns should be the community values that influence the Commission's decision. Concho excepts to using whether modified route consent forms are provided to the Commission to serve as the basis of the ALJs' conclusion on community values. The landowners' and Concho's concerns are real and should be given more important recognition than the ALJs provide in the PFD.

**Recreational and park areas**

The Commission's CCN application requires applicants to "list all parks and recreation areas owned by a governmental body or an organized group, club, or church and located within 1,000 feet of the centerline of the route."<sup>29</sup> The application also requires the applicant to "[i]dentify the owner of the park or recreational area (public agency, church, club, etc.)."<sup>30</sup> The PFD states "[t]here are no parks or recreational areas within 1,000 feet of the centerline for any of the four referenced routes, including Route 320." Concho does not except to this finding.

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*Certificate of Convenience and Necessity for a 345-kilovolt Double-Circuit Line in Caldwell, Guadalupe, Hays, Travis and Williamson Counties, Texas*, Docket No. 33978, Order at FoF 118 (Oct. 10, 2008).

<sup>26</sup> PFD at 52.

<sup>27</sup> *Id.* at 24-25.

<sup>28</sup> *Id.* at 23.

<sup>29</sup> Applicants Ex. 1, Application, Q. 26 at 28.

<sup>30</sup> *Id.*

**Historical and aesthetic values**

The PFD recommends “if any further archeological or cultural resources are found during construction of the proposed transmission line, the Applicants should immediately cease work in the vicinity of the archeological or cultural resources, and notify the Texas Historical Commission.”<sup>31</sup> Concho supports this recommendation.

**Environmental integrity**

“With regard to these environmental factors, Route 320 is roughly equal to Route 41, and superior to Route 325.”<sup>32</sup> Staff witness Bautista agreed with the Applicants’ consultant, Halff, that constructing this transmission line project is not anticipated to have significant adverse impacts on soils when appropriate mitigation measures are implemented.<sup>33</sup> Mr. Bautista also testified, “The proposed project is expected to cause only short-term effects to water, soil, and ecological resources during the initial construction phase.”<sup>34</sup>

The Commission should conclude that Route 325 Modified, Route 325, Route 320 Modified, or Route 320 is acceptable from an environment and land use perspective.

**Probable improvement of service or lowering of costs to consumers**

The project probably will improve service to consumers by increasing the reliability of the transmission grid and its ability to support continued load growth.

**PURA § 37.056(c) criteria summary**

Evaluating the PURA 37.056(c) requirements<sup>35</sup> should lead the Commission to conclude the project is needed. Other factors, such as community

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<sup>31</sup> PFD at 27.

<sup>32</sup> *Id.* at 29.

<sup>33</sup> Staff Ex. 1, Bautista Direct at 23.

<sup>34</sup> *Id.* at 24.

<sup>35</sup> PURA requires the Commission to consider the adequacy of existing service, the need for additional service, the effect of granting the certificate on the recipient of the certificate and any



values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of costs to consumers do not provide controlling evidence for the Commission's decision on which route is the best route. Under the circumstances, the Commission should turn to its substantive rule to evaluate the alternative routes.

## 2. 16 TAC § 25.101(b)(3)(B) criteria

Besides the PURA statutory requirements, the Commission identified in a substantive rule several factors it is to consider in deciding CCN applications. The Austin Court of Appeals stated the plain language of the rule grants the Commission authority to consider and weigh a variety of factors with the criteria in PURA § 37.056 in determining the most reasonable route for a transmission line.<sup>36</sup> No one factor controls or is dispositive, but the Commission is directed to consider the factors and their *impact on landowners to the extent reasonable*.<sup>37</sup>

Specifically, Commission rule 25.101 provides that, considering the PURA criteria, engineering constraints, and costs, *the line should be routed to the extent reasonable to moderate the impact on the affected community and landowners*, unless grid reliability and security dictate otherwise.<sup>38</sup>

The Commission's rule requires it to consider: (i) whether the routes utilize existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines; (ii) whether the routes parallel existing compatible rights-of-way; (iii) whether the routes parallel property lines or other natural or cultural features; and (iv) whether the routes conform with the policy of prudent avoidance.<sup>39</sup>

As shown in the table below, Route 325 significantly outperforms Route 320 when considering the 25.101(b)(3)(B)(i-iv) criteria. Because the PURA criteria do not strongly guide this routing decision, the Commission should give weight to

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electric utility serving the area and other factors, such as: community values; recreational and park areas; historical and aesthetic values; environmental integrity; and the probable improvement of service or lowering of costs to consumers.

<sup>36</sup> *Dunn v. Public Utility Comm'n of Texas*, 246 S.W.3d 788, 795 (Tex. App.-Austin 2008, no pet.).

<sup>37</sup> *Id.* (Emphasis added.)

<sup>38</sup> 16 TAC § 25.101(b)(3)(B) (Emphasis added).

<sup>39</sup> 16 TAC § 25.101(b)(3)(B)(i-iv).

Route 325's performance in landowner-affecting categories, engineering constraints, costs, and moderation of impact on the affected community and landowners.

	<b>Route 325<sup>40</sup></b>	<b>Route 320</b>
Use of existing ROW	0	0
Length of route parallel to existing electric transmission lines	<b>58,317</b>	10,149
Percent of route parallel to transmission lines	<b>20.6%</b>	4.3%
Total length of route parallel to existing compatible rights-of-way	<b>138,047</b>	63,940
Percent parallel to existing compatible rights-of-way	<b>48.7%</b>	27.2%
Length parallel to apparent property boundaries	<b>78,749</b>	44,365
Percent parallel to apparent property boundaries	<b>27.8%</b>	18.9%
Length of route not parallel to existing rights-of-way	<b>145,675</b>	171,241
Percent of route not parallel to existing rights-of-way	<b>51.3%</b>	72.8%
Habitable structures	<b>37</b>	38

### **Engineering constraints**

The PFD acknowledges “[t]he area encompassing the Project is undergoing rapid development in energy infrastructure that may give rise to engineering constraints encountered during project design and construction.”<sup>41</sup>

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<sup>40</sup> Applicants Ex. 1, Application, Att. 12b, Table 2, Routing Memo Table. Data is from the exhibit. Percentages are calculated by dividing or subtracting the data from the table by/from route length.

<sup>41</sup> PFD at 30.

Concho's testimony provides a basis for the ALJs' recognition of the rapid development in the study area. "When Concho decides to drill a new well, the well site is surveyed and the company files a permit application at the Railroad Commission. From the time the company makes its decision to the time drilling starts on a well, the process can take as little as three weeks."<sup>42</sup>

At the hearing on the merits, Concho witness Lowery discussed an exhibit showing the expansion of the Big Chief oil field from 2013 to 2019.<sup>43</sup> Mr. Lowery testified from 2014 to 2016 oil prices affected drilling activity, but "with prices where they are now, development has started and is accelerating."<sup>44</sup> Oxy's witness, Mr. Mendoza, testified there is not a slowdown in Oxy's planned drilling counts and dollars spent.<sup>45</sup>

### **Safety and distances from Concho's operations**

Construction of the transmission line project within 150 feet of existing wells or facilities will create health and safety concerns for Concho's and Oncor/AEP's personnel.<sup>46</sup> Concho recommends 300 feet separation from gathering and processing facilities to transmission construction. The oil and gas facilities occasionally require the gas to be flared. And, some of these facilities may process H<sub>2</sub>S gas.<sup>47</sup> Also, to mitigate safety concerns related to existing gathering and processing facilities, the Commission should not approve construction of the project within 150 feet of Concho's existing gathering and processing facilities."<sup>48</sup>

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<sup>42</sup> Concho Ex. 1 at 6. Oxy's witness testified that, in a general case, "it may take just a few weeks to get a site permitted and then a couple more weeks to actually get it platted, surveyed, to where the pad site is going to be located, and then a couple more weeks from there to actually start development of the pad and start deploying rigs. So you're talking eight weeks in a kind of general time frame as we start really planning an execution." Tr. at 90:11-18.

<sup>43</sup> Tr. at 105:6-107:16; Concho Ex. 4.

<sup>44</sup> Tr. at 106:19-24.

<sup>45</sup> Tr. at 89:5-8.

<sup>46</sup> Oxy's witness testified, "From a safety standpoint, we need a minimum of a 150-foot clearance from those existing facilities . . . but we'd prefer to have a 300-foot clearance. That would allow us to get in and do any kind of work and operations with the cranes and rigs as necessary." Tr. at 91:5-10.

<sup>47</sup> Concho Ex. 1 at 9.

<sup>48</sup> *Id.* at 11. Concho described its facilities near the proposed link locations. "A typical facility, or battery, includes separators, heater treaters, oil and water storage tanks, transfer pumps, vapor recovery unit, vapor tower, combustion chamber, H<sub>2</sub>S treating tower and Flare."

Concho is not saying there are no circumstances under which the transmission line can be built near its operations. Mr. Lowery testified, “Assuming transmission line construction maintains 300 feet separation from the drill pad and pits, and access roads remain open, the transmission line should not be a problem.”<sup>49</sup>

**How the transmission line project will affect Concho’s operations and how those effects will be engineering constraints that increase the actual or societal costs of the project**

Concho Exhibit No. 3 shows Concho’s master plan for development. The master plan is put together to most efficiently develop its reserves and to recover oil from its leasehold.<sup>50</sup> Concho’s concerns about engineering constraints and the effects of the transmission lines on its oil and gas production are common to all of Concho’s operations.<sup>51</sup> Concho’s concerns about the effects of the transmission line on its production include:

- The project may require moving surface locations of drill wells to less desirable areas resulting in reduced productivity and higher investment.<sup>52</sup>
- Relocating wells or surface locations may cause reduced income, increased costs, and less efficient production.
- The insertion of a transmission line, associated construction, and eventual poles and energized wires will affect the efficiency of Concho’s operations.<sup>53</sup>
- Concho also runs oil, gas, and water pipelines and other facilities on the surface of the field.
- Concho has water disposal lines and other pipes that run from the well to lease facilities where Concho separates oil, water, and gas, and those processes take place in common facilities.
- Concho may have to construct additional facilities to accommodate the transmission line. A production facility for wells can cost up to \$3 million.<sup>54</sup>

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<sup>49</sup> *Id.* at 8.

<sup>50</sup> Tr. at 108:8-11.

<sup>51</sup> Concho Ex. 7 at 7.

<sup>52</sup> Concho Ex. 1 at 8.

<sup>53</sup> Concho Ex. 2 at 7.

<sup>54</sup> *Id.*

- The bisection of the field may require Concho to install a two-mile flow line to get to those new facilities where Concho processes oil, gas, and water and separates those to its sales lines.<sup>55</sup>
- If Concho has to move a single well location, there could be as many as four wells affected by that change.
- If Concho has to move a well away from a section line where it is allowed to penetrate, a reduced length will decrease the economic benefit not only for Concho, but also for the mineral owners.<sup>56</sup>
- There are cases in which the considerable expense of drilling another well to avoid the transmission line cannot be justified because it is not worthwhile to make it worthwhile.<sup>57</sup>

### **Summary of Concho's engineering constraints concerns**

The ALJs focused on the utilities' standard cost estimates and gave little weight to engineering constraints associated with the existing oil and gas developments that create the need for this project. Concho and Oxy raise valid safety and operational concerns and the Commission should direct the Applicants to avoid engineering constraints in producing oil and gas fields.

At this time Concho, the Applicants, and the Commission do not know the exact locations where the Applicants will construct the transmission lines. These locations will not be known until after the Commission approves a route and the Applicants' engineers work with on-the-ground conditions. Because of this uncertainty, Concho supports avoiding the greatest part of the oil fields, approval of proposed, Applicants-vetted, and landowner-consented modifications, and post-approval flexibility. These decisions will benefit the State of Texas, landowners and mineral rights owners, and Concho.

### **Costs**

The Applicants prepared cost estimates for each of their filed routes and the intervenor-proposed modifications.<sup>58</sup> The PFD lists the utility-provided costs for each alternative the ALJs considered.<sup>59</sup> The Applicants' cost estimates provide

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<sup>55</sup> *Id.*

<sup>56</sup> Tr. at 108:12-25.

<sup>57</sup> Tr. at 109:11-15.

<sup>58</sup> Applicants Ex. 1, Estimated route costs.

<sup>59</sup> PFD at 5.

the cost of labor, material, and standard right-of-way estimates to construct the project.

With substation costs, the Applicants estimate Route 320 will cost \$125,931,000. Route 320 is the least expensive route. The Applicants estimate Route 325 will cost \$144,093,000, \$18.1 million more than Route 320. The range of cost estimates for the routes the Applicants propose is \$125,931,000 to \$154,614,000. The Applicants proposed six viable routes more expensive than Route 325.

When they prepared their cost estimates, the Applicants had no information about the actual and societal costs if the project is constructed so it interferes with oil and gas development in the region. The PFD does not acknowledge or address Concho- and Oxy-identified costs associated with engineering constraints in their oil fields.

The effect of crossing an existing well or placing the transmission line so the well is in the right-of-way could require condemnation at a cost of millions of dollars per wellbore. Even the effect of moving a well may require a second set of production facilities that otherwise would not be needed-at a cost of \$2,000,000 to \$3,000,000.<sup>60</sup> Besides reduced royalties for Concho and the mineral owners, who typically receive 25% of the revenue from a well, the State of Texas will receive less severance taxes.<sup>61</sup> The cost of approving Route 325 Modified could look small when compared to the potential as-built cost of Route 320.

**Moderation of impact on the affected community and landowners**

The legislative directive to the Commission to moderate the impact of the transmission line on the affected community and landowners is important. The Commission must consider the factors and their impact on landowners to the extent reasonable.<sup>62</sup>

The Commission's rule does not support exclusive reliance on data, the rule requires the Commission to consider statutory criteria, engineering

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<sup>60</sup> Concho Ex. 2 at 7.

<sup>61</sup> Tr. at 109:1-6.

<sup>62</sup> 16 TAC § 25.101(b)(3)(B).

constraints, and costs, then the line *shall* be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise.<sup>63</sup> This issue goes beyond simple good practices by the Applicants. In approving a route, the Commission *must* moderate the impact on the affected community.

The PFD recognizes that Concho and Oxy and Concho strongly prefer Route 325 Modified as the best route to avoid their oil and gas production properties.<sup>64</sup> As to Concho's arguments, the PFD concludes Route 320 is superior to Route 325 Modified regarding the majority of relevant criteria, including cost, length, and effect on environmental and wildlife resources. The ALJs consider these arguments speculative and without explanation that mineral interests would need to be condemned to build an above-ground transmission line.<sup>65</sup>

Oncor's witness testified if Oncor encounters an unanticipated obstacle and the utility cannot find a workaround, Oncor would have to condemn the facility in the way of the transmission line.<sup>66</sup> Concho's evidence illustrates how condemning an existing well or relocating a future well may cost millions of dollars and reduce the production value of the well.<sup>67</sup> Concho's evidence illustrates how there are safety concerns associated with constructing the transmission line within its facilities, or batteries, including separators, heater treaters, oil and water storage tanks, transfer pumps, vapor recovery unit, vapor tower, combustion chamber, H<sub>2</sub>S treating tower and Flare.<sup>68</sup> Concho's evidence illustrates how construction of the transmission line may require moving facilities, or batteries, at a cost of \$2-3 million.<sup>69</sup>

If the project is constructed so Concho's wells or facilities are in the rights-of-way, the safety concerns and costs are not speculative. If the project is constructed so Concho's wells are less than 300 feet and facilities are less than 150

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<sup>63</sup> *Id.* (Emphasis added.)

<sup>64</sup> PFD at 31.

<sup>65</sup> *Id.* at 32.

<sup>66</sup> Tr. at 45:7-17. "I think there's some unknown in what that process would look like."

<sup>67</sup> Concho Ex. 2 at 6-7.

<sup>68</sup> Concho Ex. 1 at 11.

<sup>69</sup> Concho Ex. 2 at 7.

feet from the transmission line, the dangers are known but the extent and interference with Concho's operations is unknown.

From Concho's perspective, the best way to avoid this uncertainty is to approve construction of the project on Route 325 Modified. That route avoids Concho's and Oxy's active development and the unknown engineering constraints are less likely to pose problems.

The unknown nature of where, exactly, the Applicants' engineers will propose to construct the transmission line leaves Concho and the Commission without solid information on which to base a decision. If the transmission line is constructed over 300 feet from Concho's wells and over 150 feet from its facilities, Concho agrees there will be no danger and no increased costs.

A Commission order that does not provide flexibility for the Applicants to address these issues after approval of the application does not give Concho assurance its safety concerns and engineering constraints will be considered.

If, because of increased costs, the Commission objects to approving Route 325 Modified to avoid the oil and gas development areas, it should approve the requested, Applicants-vetted modifications to which landowners provided consent. The Commission also should provide the Applicants the limited flexibility the Applicants requested to work with engineering constraints after approval of this project.

Concho's preference to moderate the impact on its operations-and best avoid its oil and gas operations-is for the Commission to approve Route 325 Modified. There is another way, though, to moderate the impact on Concho's operations. With Concho's and Oxy's proposed modifications, Concho does not oppose the use of Route 320.<sup>70</sup> "Route 320 is at the edge of Concho's field and the likely effect of Route 320 is mitigated by careful placement of the transmission line in relation to the wells and facilities."<sup>71</sup> Concho's support of Route 320 is conditioned upon the Commission approving Concho's proposed modifications to Segments J1 and J7 and Oxy's concerns on the northern part of Route 320.

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 8.



**16 TAC 25.101(b)(3)(B) criteria**

Regarding the factors to be considered by the Commission for routing a proposed transmission line, the Commission's substantive rule states:

Routing: An application for a new transmission line shall address the criteria in PURA §37.056(c) and considering those criteria, engineering constraints, and costs, the line shall be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise. The following factors shall be considered in the selection of the utility's alternative routes unless a route is agreed to by the utility, the landowners whose property is crossed by the proposed line, and owners of land that contains a habitable structure within 300 feet of the centerline of a transmission project of 230 kV or less, or within 500 feet of the centerline of a transmission project greater than 230 kV, and otherwise conforms to the criteria in PURA §37.056(c):

- (i) whether the routes utilize existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines;
- (ii) whether the routes parallel existing compatible rights-of-way;
- (iii) whether the routes parallel property lines or other natural or cultural features; and
- (iv) whether the routes conform with the policy of prudent avoidance.<sup>72</sup>

The percentage of Route 325's length that parallels existing compatible rights-of-way is approximately 48.7% of the length.<sup>73</sup> Route 320 parallels existing compatible rights-of-way for only 27.2% of its length.<sup>74</sup> Route 325 also outperforms Route 320 and Route 41 on its paralleling of property lines. Route 325 has one habitable structure fewer than Route 320. On the categories that identify the impact on landowners, Route 325 performs well and the Commission should give it strong consideration.

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<sup>72</sup> 16 TAC 25.101(b)(3)(B).

<sup>73</sup> Applicants Application at Ex. 1, Application, EA Table 7-2.

<sup>74</sup> *Id.*

**Use of existing ROWs**

None of the proposed routes utilize existing rights-of-way.

**Parallel existing ROWs**

Staff witness Bautista included in his testimony tables that illustrate the total percentage of rights-of-way used by each route.<sup>75</sup> Route 325 has the second-greatest length paralleling rights-of-way (26.1 of 53.7 miles) and the greatest percentage of length parallel to rights-of-way-48.7%. Route 320 has only 27.2% of its length paralleling existing rights-of-way and Route 41 has only 26.4%.

Route 325 also parallels 11 miles of existing transmission lines. Route 320 and Route 41 parallel only 1.9 miles of existing transmission lines. This is another advantage of Route 325 over the other two routes and reduces the impact of the project on landowners.

Mr. Bautista testified he considers using existing easements and rights-of-way one key way to mitigate concerns in this project.<sup>76</sup> Route 325 significantly outperforms Routes 320 and 41 in this category.

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<sup>75</sup> Staff Ex. 1 at 28-29.

<sup>76</sup> *Id.* at 36.

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	Route 325	Route 320
Length of route parallel to existing electric transmission lines	58,317	10,149
Percent of route parallel to transmission lines	20.6%	4.3%
Total length of route parallel to existing compatible rights-of-way	138,047	63,940
Percent parallel to existing compatible rights-of-way	48.7%	27.2%
Length of route not parallel to existing rights-of-way	145,675	171,241
Percent of route not parallel to existing rights-of-way	51.3%	72.8%

**Parallel property lines or other natural or cultural features**

The PFD shows Route 325 substantially outperforms Route 320 and Route 41 in paralleling property lines. Route 325 parallels 78,749 feet of apparent property lines.<sup>77</sup> Route 320 parallels only 44,365 feet and Route 41 parallels 44,559 feet.<sup>78</sup> Route 325 parallels over 14 miles more property lines than Route 320. The greater paralleling of property lines by Route 325 will decrease the impact of the transmission line on affected property owners.

	Route 325	Route 320
Length parallel to apparent property boundaries	78,749	44,365
Percent parallel to apparent property boundaries	27.8%	18.9%

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<sup>77</sup> PFD at 5.

<sup>78</sup> *Id.*

**Prudent avoidance**

The Commission's rules define prudent avoidance as "[t]he limiting of exposures to electric and magnetic fields that can be avoided with reasonable investments of money and effort."<sup>79</sup> Prudent avoidance also considers what can be done in different settings, such as rural versus urban areas, where routing options and the opportunities to make routing adjustments differ. This does not mean that a proposed transmission line must avoid habitable structures at all costs, but that reasonable alternatives must be considered.<sup>80</sup> Route 325 Modified affects one habitable structure fewer than Route 320. While one fewer habitable structure is one fewer habitable structure, it is not a significant difference on which the Commission should base a decision to approve Route 325 Modified.

	<b>Route 325</b>	<b>Route 320</b>
Habitable structures	<b>37</b>	38

**Summary of 16 TAC § 25.101(b)(3)(B) criteria**

Route 325 Modified's paralleling of compatible rights-of-way and property lines benefit landowners and the community. The Commission should not overlook the benefits of increased paralleling of compatible rights-of-way. Keeping transmission lines near compatible uses benefits landowners and a difference of 48.6% for Route 325 vs. 27.2% for Route 320 or 26.4% for Route 41 is significant.

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<sup>79</sup> 16 TAC § 25.101(a)(4).

<sup>80</sup> *Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Proposed EC Mornhinweg to Parkway 138-kV Transmission Line in Comal and Guadalupe Counties*, Docket No. 40684, Order at FoF 84 (Jun. 19, 2013).

- B. Issue No. 5: Are there alternative routes or facilities configurations that would have a less negative impact on landowners? What would be the incremental cost of those routes?**
- C. Issue No. 6: If alternative routes or facility configurations are considered due to individual landowner preference: a) Have the affected landowners made adequate contributions to offset any additional costs associated with the accommodations? b) Have the accommodations to landowners diminished the electric efficiency of the line or reliability?**

Concho described, in its discussion of safety and distances from Concho's operations in its engineering constraints discussion, the negative impact construction of the transmission line within 300 feet of its wells or 150 feet of its facilities. The Commission should decide that Route 325 Modified is the best route. If the Commission determines Route 320 is the best route, Concho first urges it to approve Route 325 Modified instead as a route that will have less negative impact on landowners. The incremental cost of Route 325 Modified over Route 320 is \$18.1 million.

Concho works with dozens of landowners in the area. Those landowners care about their royalties and efficient oil and gas production on their properties. Construction of the project near Concho's wells and production facilities poses safety concerns. Dozens of landowners provided consents to requested modifications so oil and gas wells can be efficient and productive. Concho believes no noticed landowner from whom consent for modifications was required-and could be located-denied consent for modifications. Construction of the project so existing wells must be shut down or moved-at the costs of millions of dollars-would be a horribly negative impact on those landowners and mineral rights owners. If the Commission will not approve Route 325 Modified, Concho requests the Commission approve consented-to modifications on Route 320 to minimize the impact on Concho, its lessors, and the community.

**Concho's proposed modifications**

Concho proposed modifications to Links J7, F3, and D31 to mitigate the negative effect of the project on Concho's operations.<sup>81</sup> Concho's witness described the negative effects on Concho's operations and the potential health and safety risks.<sup>82</sup>

The areas circled on Figure 2 on page 6 identify the areas where Route 320 may affect Concho's Paradox offset locations. Concho proposed a slight reroute (shown in red below) pushing the transmission line east to avoid those locations. After working with Oxy and the Applicants, the parties identified a proposed consent modification.

The PFD states, "As of the date the record closed in this docket on March 19, 2019, however, Concho and Oxy had not obtained landowner consents for all of their proposed modifications to either Routes 325 or 320."<sup>83</sup> The Commission should not require Concho and Oxy to obtain all consents for all modifications to approve a single link modification. The Commission should approve individual link modifications for which Concho and Oxy have obtained required landowner consents. The J1/J7 modifications meet this standard.

Concho obtained all but one of the consent forms for its proposed \$68,000 K11 modification. For its K11 modification, Concho obtained three separate landowners' consents and twenty-one of twenty-two joint owners of another affected parcel. The Commission should consider approving that modification if it approves Route 325 or, in the alternative, include post-approval flexibility language that will allow the Applicants to address the engineering constraints Concho identified.

**Concho's J1/J7 modification<sup>84</sup>**

The yellow-dashed line in the figure below is the link proposed in the application. The proposed consent alternative is shown in blue. The Applicants

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<sup>81</sup> Concho Ex. 1 at 11.

<sup>82</sup> *Id.*

<sup>83</sup> PFD at 2.

<sup>84</sup> During the collaboration with the Applicants and Oxy, Concho's J7 modification became referred to as the J1/J7 modification.

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estimate the modification will increase the cost of Route 320 or Route 41 by approximately \$600,000.<sup>85</sup> Besides avoiding Concho's wells and facilities, the consented-to modification moves closer to the section line and better conforms to the Commission's interest in paralleling property lines. Concho's proposed modification on Links J1 and J7 affects two landowners who own tracts 80, 82, and 84, 145, and 146. Both landowners consented to the modifications.<sup>86</sup>

<b>J1/J7 Tract</b>	<b>Noticed? Att. 14</b>	<b>Owner</b>	<b>Consented</b>
80, 82, 84	Yes	Collier Enterprises Inc.	Yes <sup>87</sup>
145, 146	Yes	Hoefs Ranch LLC	Yes <sup>88</sup>

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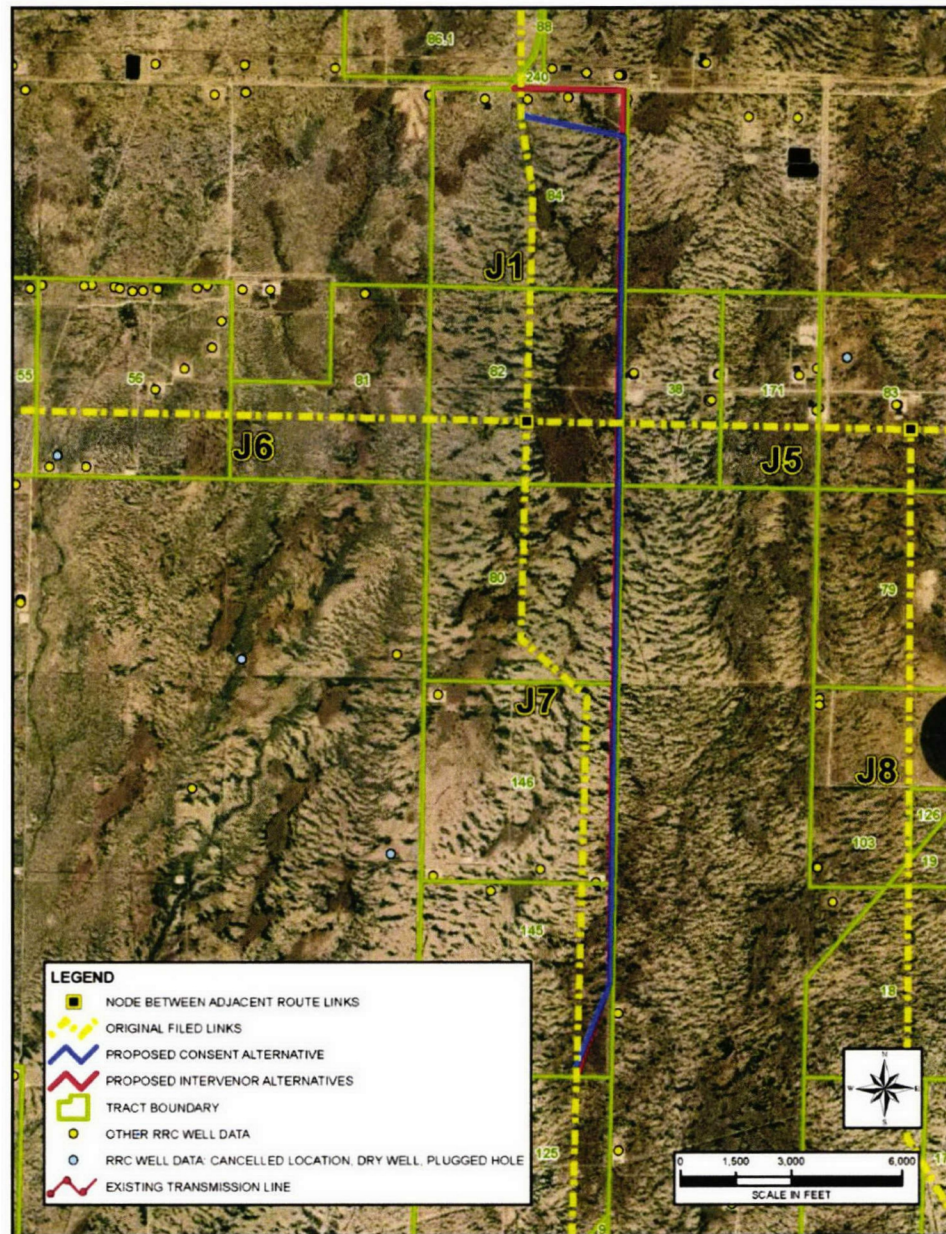
<sup>85</sup> Applicants Ex. 12, Peppard Rebuttal at 12.

<sup>86</sup> A previous Concho filing identified three landowners of a Tract 240 from whom consent was required for the J1/J7 modification. Because the consent modification colored in blue turns west sooner than the Concho-proposed modification, Tract 240 is not affected by the consent modification and consent from those landowners is not required.

<sup>87</sup> Concho Ex. 5-J7-1.

<sup>88</sup> *Id.*

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**Concho's F3 modification**

As proposed in the application, Link F3, a link on Route 320, will cross near an existing Angler field well and compromise future project locations.



Rerouting the transmission line a little further east will avoid the existing facility and minimize the effect on the future development in that field.<sup>89</sup>

Concho identified three surface landowners affected by Link F3 with whom it has a relationship. The Applicants provided each landowner with notice of the application. Concho obtained signed consent forms from all three landowners and submitted them as Exhibit 5-F3-1. The Link F3 surface landowners are: Collier, Ronald; Tollett, Cecilia; and Wolf Bone Ranch Partners, LLC.

Concho understands Oxy has not obtained all required landowner consents for Link F3.

#### **Concho's K11 modification**

Concho's proposed K11 modification affects only tracts: 122, 140, 142, 173, 175, 230, and 362. The Applicants estimate the modification will increase the cost of Route 325 by approximately \$68,000.<sup>90</sup> Concho identified several landowners affected by Link K11.

<b>Tract(s) Owned</b>	<b>Owner</b>	<b>Consented</b>
199, 200, 201, 202, 92, 147, 148, 173, 174, 174.1, 175, 213, 286, 287, 288, 288.1, 290, 291, 293, 392, 405	Hanging H Ranches Inc.	Yes <sup>91</sup>
140, 141.1, 142, 143, 144, 145, 146, 362, 364	Hoefs Ranch LLC	Yes <sup>92</sup>
1, 3, 4, 5, 6, 7, 8, 10, 11, 14, 17, 18, 19	McCoy Remme Ranches LTD f/k/a McCoy Land & Cattle Co	Yes <sup>93</sup>
121.1, 122, 123, 125, 126	McCoy Land & Cattle Co	Yes <sup>94</sup>

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<sup>89</sup> Concho Ex. 1 at 13.

<sup>90</sup> Applicants Ex. 12, Peppard Rebuttal at 12.

<sup>91</sup> Concho Ex. 5-K11-3.

<sup>92</sup> Concho Ex. 5-K11-1.

<sup>93</sup> Concho Ex. 5-K11-3.

<sup>94</sup> *Id.*

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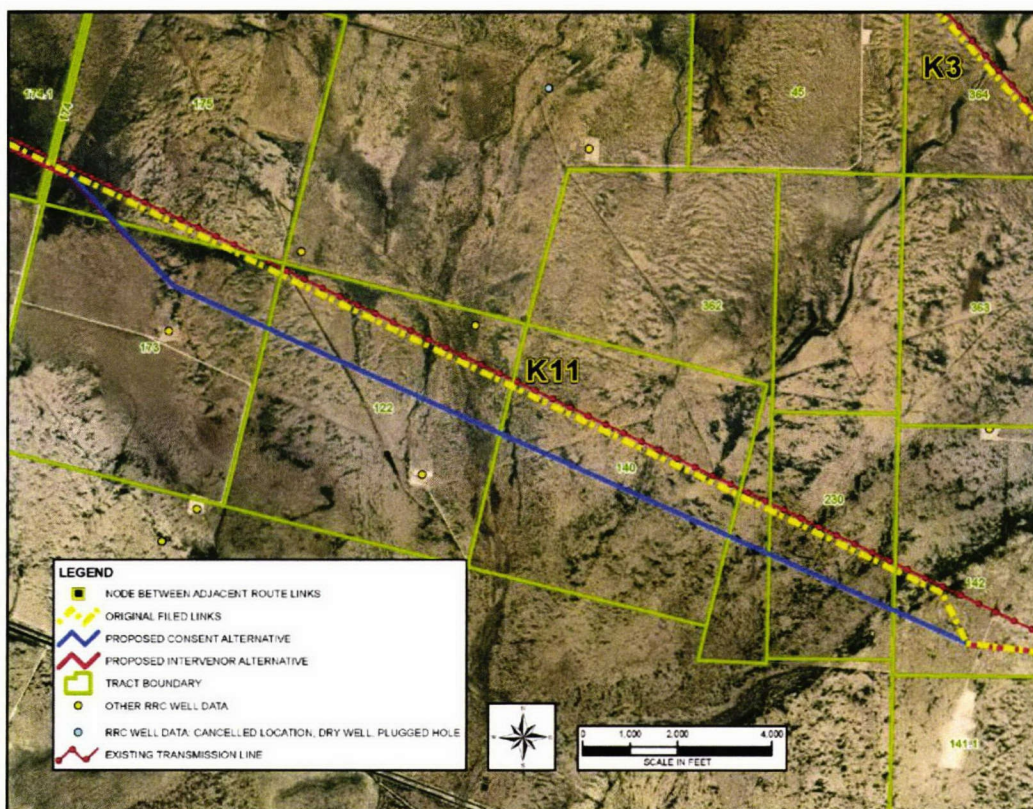
Tract(s) Owned	Owner	Consented
230	Scarbrough, M.A. Heirs	93.75% <sup>95</sup>
122	Wolf Camp Properties, LLC	Yes <sup>96</sup>

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<sup>95</sup> Concho obtained consent forms from these M.A. Scarbrough heirs:

Adams, Myrtle May (Concho Ex. 5-K11-1).  
Cannon, Brenda & Ron (Concho Ex. 5-K11-1).  
Dennard, Ronald David (Concho Ex. 5-K11-1).  
Dickinson, Glynda V. (Concho Ex. 5-K11-1).  
Dyer, Larry (Concho Ex. 5-K11-1).  
Emerson, Jane (Concho Ex. 5-K11-1).  
Emerson, Jane Co-Trustee of the Joy Hackleman Trust (Concho Ex. 5-K11-1).  
Hackleman, Billy Wade (Concho Ex. 5-K11-1).  
Holder, James & Deborah (Concho Ex. 5-K11-1).  
Kincer, Norma (Concho Ex. 5-K11-1).  
Moran, Samuel B. (Concho Ex. 5-K11-1).  
Nelson, Joyce C. (Concho Ex. 5-K11-1).  
Riley, Charlene (Concho Ex. 5-K11-1).  
Scarbrough, Burrell Lee (Concho Ex. 5-K11-1).  
Scarbrough, J.B. (Concho Ex. 5-K11-1).  
Scarbrough, James Wendell (Concho Ex. 5-K11-1).  
Stephens, Billy Joe (Concho Ex. 5-K11-2).  
Stephens, Garry Lee (Concho Ex. 5-K11-1).  
Stringfield, Russell Eugene (Concho Ex. 5-K11-1).  
Workman, Linda Fae (Concho Ex. 5-K11-1).  
Young, Roberta Nell Copeland (Concho Ex. 5-K11-1).

<sup>96</sup> Concho Ex. 5-K11-1.



Concho obtained landowner consents from Hanging H Ranches Inc., Hoefs Ranch LLC, and McCoy Remme Ranches LTD. Although Wolfcamp Properties, LLC did not receive notice FOR Link K11, the entity informed Concho it owns a portion of one section affected by the modification, so Concho obtained Wolfcamp Properties' consent for the K11 modification.

The heirs of M.A. Scarbrough own Tract 230, or Section 28. There are twenty-two persons or entities with undivided interests. Concho obtained consent forms from all but one heir.<sup>97</sup> Concho identified Mack W. Dennard, Jr. as an heir to the M.A. Scarbrough Estate, but could not contact him to obtain his consent. Concho's land team and an outside vendor made strong efforts to locate him. They contacted Mr. Dennard's nephew, Ronald David Dennard, but the nephew

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could not provide Concho with information about Mr. Dennard's location. Concho contacted Mr. Dennard's cousin, Larry Dyer, who could not provide any information for Mr. Dennard. Mr. Dyer told Concho if anyone would can contact Mr. Dennard, it would be Burrell Scarbrough. Concho contacted Burrell Scarbrough, Mr. Dennard's cousin, and his wife Mary, who contacted several other family members to obtain contact information for Mr. Dennard, but none was found.

The Applicants provided notice to the Scarbrough Heirs at the address on the county tax records. The Applicants did not provide individual notice to Mr. Dennard. Concho went beyond the tax records and worked with a third-party vendor to obtain consent from each heir of the estate. The persons or entities from whom Concho obtained consents represent 93.75% of the ownership interests of that section. Mr. Dennard holds the remaining 6.25% interest.

If the Commission approves Route 325, Concho requests the Commission determine it obtained a sufficient number of landowner consent forms and authorize the Link K11 modification. In the alternative, if the Commission determines Mr. Dennard's consent is required for the modification, the post-approval flexibility language the Applicants request may be utilized as the Applicants construct this project.

### **Concho's D31 modification**

Because none of the four routes considered in the PFD include Link D31, Concho is no longer pursuing its proposed modification on that link.

### **3. Route summary (Issue Nos. 4, 5, and 6)**

The Applicants recommended Route 320 in their application as the route they proposed that best meets the Commission's routing criteria. Testimony and the hearing focused on three alternative routes: Route 325 Modified, which spans the western part of the study area and best avoids oil and gas production in the area; Route 320, which is on the eastern side of the oil and gas production but passes near existing and ongoing development; and Route 41, Staff's recommendation that is the same as Route 320 except for links on the northern

end of the study area to avoid man camps for oilfield workers. The PFD also compares TPWD's recommended Route 324.

The Commission's evaluation of the PURA requirements<sup>98</sup> should lead it to conclude the project is needed. Other statutory factors do not provide controlling evidence for the Commission's decision on which route is the best route.

The Commission's rule directs it to consider the statutory criteria, engineering constraints, and costs. The rule includes several factors the Commission must consider. The percentage of Route 325's length that parallels existing compatible rights-of-way is approximately 48.7% of the length.<sup>99</sup> Route 320 parallels existing compatible rights-of-way for only 27.2% of its length.<sup>100</sup> Route 325 also outperforms Route 320 and Route 41 on its paralleling of property lines. Route 325 has one habitable structure fewer than Route 320. On the categories that identify the impact on landowners, Route 325 performs well and the Commission should give it strong consideration on the merits.

The rule also requires the line to be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise.

Concho and Oxy provided extensive evidence on their safety concerns, engineering constraints, and the impact of the project on their operations if the transmission lines are constructed too close to their wells and production facilities. The Applicants' projected costs will increase if the Applicants construct the project too close to Concho's, Oxy's, or another producer's operations. There are many reasons to moderate the impact on the primary land use. The Commission should avoid oil and gas development or approve modifications and post-approval flexibility to ensure the best outcome in this productive area.

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<sup>98</sup> PURA 37.056(c) requires the Commission to consider the adequacy of existing service, the need for additional service, the effect of granting the certificate on the recipient of the certificate and any electric utility serving the area and other factors, such as: community values; recreational and park areas; historical and aesthetic values; environmental integrity; and the probable improvement of service or lowering of costs to consumers.

<sup>99</sup> Applicants Application at Ex. 1, Application, EA Table 7-2.

<sup>100</sup> *Id.*

The biggest drawback to Route 325 Modified is its higher cost. The strong performance on landowner-affecting factors combine with moderating the impact on landowners and the potential increases of cost on Route 320 to overcome the higher cost of Route 325 Modified. The answer to Issue No. 4, the route that best satisfies PURA and the Commission's rules,<sup>101</sup> is Route 325 Modified.

Concho provided landowner consents for its J1/J7 modification. The Applicants vetted the modification and will construct the modification if the Commission approves them. The answer to Issue No. 5 is, then, that the Commission should approve Concho's proposed J1/J7 modification if the Commission approves Route 320.

## **VI. Issue No. 7: Texas Parks and Wildlife Department**

The PFD does not recommend TPWD's recommended route, Route 324. The PFD discusses TPWD's recommendations and the proposed findings of fact, findings of law, and ordering paragraphs appropriately address TPWD's recommendations. Concho has no exceptions related to Issue No. 7.

## **VII. Other Issues**

### **Post-approval flexibility**

The rapid growth and development in the study area underscores the need for flexibility in refining the route approved by the Commission to accommodate for obstacles encountered in the field following Commission approval.<sup>102</sup> The Applicants noted both Concho and Oxy agree it is reasonable and appropriate to give Applicants the ability to modify the approved route to the minimum extent necessary to avoid engineering constraints encountered during the design and construction of the Proposed Transmission Line Project, consistent with good utility practice.<sup>103</sup> The Applicants suggested one approach could be to limit this

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<sup>101</sup> PURA § 37.056(c) and 16 TAC § 25.101(b)(3)(B).

<sup>102</sup> Applicants Ex. 12, Peppard Rebuttal at 5.

<sup>103</sup> *Id.*

flexibility to properties that (1) have no habitable structures on them and (2) are primarily used for mineral development.<sup>104</sup>

This is Concho's first time to intervene and participate in a transmission line case. Even though Concho is concerned about the effects of the transmission line on its oil and gas production, Concho is grateful the Commission is approving additional transmission in the Permian Basin. The new projects will help develop a valuable resource. Concho has worked with Oncor, AEP, and Oxy, however, to mitigate the effect of the transmission line project on oil and gas production.<sup>105</sup>

Concho's participation in those cooperative efforts impressed on it the need to consider the impact of the transmission line project on Concho, other oil and gas producers, other stakeholders, and surface owners. The development in this study area is fast-moving and changing as markets evolve and oil and gas producers learn more about their development areas.<sup>106</sup>

The Commission should not limit consideration of the impact of the transmission line to the period during which it considers the application. Concho supports approval of language that gives the Applicants the ability to work with landowners and their lessee to minimize the impact of the transmission line project.<sup>107</sup>

Concho proposed the Commission grant limited authority-in this case only-to the Applicants to modify the location(s) of the approved route to the minimum extent necessary to avoid oil and gas constraints, including pipelines, the Applicants encounter after Commission approval. The Commission also could add requirements the Applicants make any modifications consistent with good utility practice, obtain consents from surface landowners and the oil and gas producer for the modification(s), and report to the Commission any modifications-and the cost of those modifications-implemented in construction of this project.

Concho's proposal limits modifications to oil and gas and pipeline constraints, requires consent of affected parties, and allows the Commission to monitor how much the Applicants utilize the flexibility granted. When the utilities

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<sup>104</sup> *Id.*

<sup>105</sup> Concho Ex. 2 at 12.

<sup>106</sup> Concho Ex. 2 at 12-13

<sup>107</sup> Concho Ex. 2 at 13.

begin their engineering to construct this project, the location of oil and gas producers will be better known than now. Oil and gas producers and the utilities can work with the surface owners to accommodate the need to construct this project while recognizing the dominant estate's rights. Minimizing economic effects on oil and gas production, while ensuring safety guidelines are met and minimizing effects on landowners, will benefit Texas and Texas ratepayers.<sup>108</sup>

## **VIII. Conclusion**

No party contested the need for the proposed project or advocated that the Commission should deny the Applicants' CCN application. Route 325 Modified is the best alternative route, weighing the factors in PURA and the Commission's rules. Alternatively, if the Commission chooses Route 320, it should approve the landowner-consented and Applicants-vetted Link J1/J7 modification. Because the development in this study area is so rapidly growing and because the primary land use is oil and gas development, the Commission should approve language to give the Applicants flexibility-only in this case-to address existing and unknown oil- and gas-related engineering constraints about which the Applicants become aware after approval of the project.

## **RELIEF SOUGHT**

COG Operating LLC requests the Commission modify the PFD to approve:

- 1) The western route (Route 325 Modified) that best avoids Concho's and Oxy's oil fields;
- 2) Modifications proposed by Concho and Oxy, coordinated with the Applicants, and approved by landowners; and
- 3) Post-approval flexibility language to address existing and unknown engineering constraints about which the Applicants become aware after approval of the project.

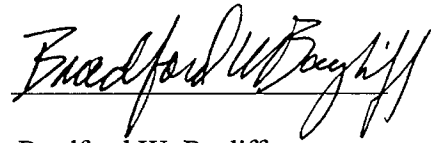
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<sup>108</sup> Concho Ex. 1 at 17.



**CERTIFICATE OF SERVICE**

I certify on the 23rd day of April, 2019, this document was filed electronically and with the Commission's Central Records office for service under the Commission's rules and the Orders in this proceeding.

  
Bradford W. Bayliff

**APPENDIX**

**PURA § 37.056(c)**

The following factors are to be considered by the Commission in determining whether to approve a CCN application:

- (1) the adequacy of existing service;
- (2) the need for additional service;
- (3) the effect of granting the certificate on the recipient of the certificate and any electric utility serving the proximate area; and
- (4) other factors, such as:
  - (A) community values;
  - (B) recreational and park areas;
  - (C) historical and aesthetic values;
  - (D) environmental integrity;
  - (E) the probable improvement of service or lowering of cost to consumers in the area if the certificate is granted; and
  - (F) to the extent applicable, the effect of granting the certificate on the ability of this state to meet the goal established by Section 39.904(a) [relating to renewable energy] of this title.

**16 TAC § 25.101(b)(3)(B)**

With regard to the factors that are to be considered by the Commission for routing a proposed transmission line, the Commission's substantive rules state:

25.101(b)(3)(B) Routing: An application for a new transmission line shall address the criteria in PURA §37.056(c) and considering those criteria, engineering constraints, and costs, the line shall be routed to the extent reasonable to moderate the impact on the affected community and landowners unless grid reliability and security dictate otherwise. The following factors shall be considered in the selection of the utility's alternative routes unless a route is agreed to by the utility, the landowners whose property is crossed by the proposed line, and owners of land that contains a habitable structure within 300 feet of the centerline of a transmission project of 230 kV or less, or within 500 feet of the centerline of a transmission project greater than 230 kV, and otherwise conforms to the criteria in PURA §37.056(c):

- (i) whether the routes utilize existing compatible rights-of-way, including the use of vacant positions on existing multiple-circuit transmission lines;
- (ii) whether the routes parallel existing compatible rights-of-way;
- (iii) whether the routes parallel property lines or other natural or cultural features; and
- (iv) whether the routes conform with the policy of prudent avoidance.

**Concho's Exceptions to proposed Findings of Fact, Conclusions of Law, and Ordering  
Paragraphs**

**Exceptions to Proposed Findings of Fact**

**Description of the Transmission Line**

- Route ~~320-325~~ Modified is approximately 44.553.7 miles in length ~~and is the shortest alternative route. The Applicants proposed ten routes with greater length.~~
- The estimated construction costs of the alternative routes range from approximately \$98,220,000 to \$126,903,000, excluding station costs.
- Route ~~320-325~~ is the least expensive alternative route and is ~~\$2810,683~~521,000 less expensive than the most expensive alternative route.

**Routes**

- Route ~~320-325~~ is estimated to cost ~~\$98,220,000~~116,382,000, excluding station costs, which is ~~the least expensive of the alternative routes and~~ ~~\$28,683~~10,521,000 less than the most expensive alternative route filed with the Application.
- Route ~~325~~0 Modified is 44.553.7 miles long and consists of Links A-B2 Modified-B3-C2-D1-E1 Modified-F1 Modified-I1-K11 Modified-K12-L2-ZA, B2, B3, C2, D2, F3, G4, G51, I2, J1, J7, L1, and Z.
- Three other routes were addressed in testimony and at the hearing on the merits. Excluding substation costs, Route 41 would cost \$99,818,000 and is 45.7 miles in length; Route 324 would cost \$105,272,000 and is 47.2 miles in length; and Route ~~325-320~~ would cost ~~\$116,382~~98,220,000 and is ~~53.744.5 miles in length.~~
- Oxy and Concho proposed modifications to Routes 325 and 320, but they had not obtained landowner consents from all landowners to implement those modifications as of March 19, 2019, when the record closed in this docket.
- On March 25, 2019, the ALJs issued SOAH Order No. 12 – Granting Motion to Admit Additional Landowner Consent Agreements.

- On April 23, 2019, Oxy and Concho filed an Unopposed Second Joint Motion to Admit Additional Evidence.
- On \_\_\_\_\_, 2019, the Commission granted the Unopposed Second Joint Motion to Admit Additional Evidence.

### **Prudent Avoidance**

- The greatest number of habitable structures within 500 feet of the centerline of any alternative route is 66, and the least number of habitable structures within 500 feet of the centerline of any alternative route is 2.
- Route ~~320~~325 has ~~38~~37 habitable structures within 500 feet of the centerline, of which 34 are mobile living or office units that are temporarily in place and appear to have no permanent foundations or permanent utilities in place.
- All of the alternative routes presented in the Application, including route ~~320~~325, conform to the Commission's policy of prudent avoidance in that they reflect reasonable investments of money and effort in order to limit exposure to electric and magnetic fields.
- A modification to Link B2 on Route ~~320~~325, proposed and agreed to by Plains Pipeline, would bisect the western turn in that link and result in 12 of ~~37~~6 habitable structures otherwise on that link being more than 500 feet from the centerline of the modified link.

### **Using or Paralleling Compatible Rights-of-Way**

- Route ~~320~~325 is parallel to existing compatible corridors, including existing transmission lines, public roads and highways, railroads, and apparent property boundaries, for approximately ~~27.2~~48.7% of its length.

### **Radio Towers and Other Electronic Installations**

- There are no commercial AM radio transmitters within 10,000 feet of the centerline of Route ~~320~~325.
- ~~There is one are no known FM, microwave, and other electronic installations located within 2,000 feet of the centerline of Route 325, and two such installations are located within 2,000 feet of the centerline of Route 324.~~  
There is one known FM, microwave, and other electronic installations located within 2,000 feet of the centerline of Route ~~325~~324. One such installation is located within 2,000 feet of the centerline of Route ~~325~~324, and two such installations are located within 2,000 feet of the centerline of Route ~~325~~324.

### Recreational and Park Areas

- None of the alternative routes, including Route ~~320~~325, directly cross any park or recreational areas.
- No parks or recreational areas are located within 1,000 feet of the centerline of any of the alternative routes, including Route ~~320~~325.
- No significant impacts to the use of parks or recreation facilities located within the study area are anticipated from any of the alternative routes, including Route ~~320~~325.

### Historical and Archaeological Values

- The number of recorded cultural resource sites crossed by an alternative route ranges from zero to two.
- ~~Routes 320, 41, and 324 do not cross any recorded cultural resource sites.~~
- Route 325 crosses one recorded cultural resource.
- No significant impacts to historical and archaeological values are anticipated from Route ~~320~~325.

### Exceptions to Proposed Conclusions of Law

- The Sand Lake-to-Solstice Project using Route ~~320~~325, with ~~a-modifications~~ to Links E1, F1, K11, and B2, is necessary for the service, accommodation, convenience, or safety of the public within the meaning of PURA § 37.056.
- Route ~~320~~325, with ~~a-modifications~~ to Links B2, E1, F1, and K11, complies with PURA § 37.056(c)(4) and 16 TAC § 25.101, including the Commission's policy of prudent avoidance, to the extent reasonable to moderate the impact on the affected community and landowners.

### Exceptions to Proposed Ordering Paragraphs

- The Commission approves the construction and operation of the Sand Lake-to-Solstice Project as specified in this Order on route ~~320~~325, comprised of the following segments:

Exceptions to the Proposal for Decision  
COG Operating LLC (Concho)

A-B2-B3-C2-D1-E1-F1-I1-K11-K12-L2-ZA, B2, B3, C2, D2, F3, G4, G51, I2, J1, J7, L1, Z, with the modification to Link B2 proposed by Plains Pipeline and the modifications to Links E1, F1, and K11 proposed by Concho and Oxy.

- The Commission approves Oncor's and AEP Texas's application to build a new double circuit 345-kV transmission line extending from Oncor's Sand Lake Switch in Ward County to AEP Texas's Solstice Switch in Pecos County. The approved route for the transmission facilities is Route ~~320~~325, with a ~~modification~~s to Links B2, E1, F1, and K11, as described in the EA.
- The Commission amends Oncor's CCN number 30158 to include construction and operation of the transmission facilities requested from Sand Lake Switch up to, but not including, the structure at the node of Links ~~G4~~\_\_\_ and ~~G51~~\_\_\_.
- The Commission amends AEP Texas's CCN number 30170 to include construction and operation of the transmission facilities requested from Solstice Switch up to, and including, the structure at the node of Links ~~G4~~\_\_\_ and ~~G51~~\_\_\_.